

ADDENDUM NO. 1 TO RFB NO. '15/04/B

**CITY OF SANTA FE
for
SANTA FE SOLID WASTE MANAGEMENT AGENCY**

**ABOVE GROUND STORAGE TANK REMOVAL AND INSTALLATION
AT THE
CAJA DEL RIO LANDFILL**

Date: August 7, 2014

Request for Bid No: '15/04/B

Due Date: August 28, 2014, no later than 2:00 PM

Addendum No. 1: See below

Pursuant to paragraph 5 of Information to Bidders, in RFB No. '15/04/B, the City of Santa Fe and the Santa Fe Solid Waste Management Agency (Agency) issue this Addendum No. 1 to RFB No. '15/04/B. This Addendum provides the requirements for bid security and for performance and payment bonds and includes a definition for contract/agreement and a Construction Agreement between the Agency and a successful bidder. This Addendum becomes part of the Contract Documents and modifies the original RFB as follows:

I. Information to Bidders, paragraph 3.

Paragraph 3, Information to Bidders, is amended and replaced so that paragraph 3 now reads in its entirety:

3. BID SECURITY

Bid Security in the amount of 5% of the amount of the bid shall accompany the bid submittal form and must be in the form of a certified or bank cashier's check made payable to the Agency or a bid bond issued by a surety licensed to conduct business in the State of New Mexico, or otherwise supplied in a form satisfactory to the Agency. The Bid Security of the successful Bidder will be retained until the Bidder has executed the Construction Agreement and furnished the required performance and labor and material bonds, whereupon it will be returned. If the successful Bidder fails to execute and deliver the Construction Agreement and furnish the required bonds within ten (10) days of the Notice of Award, the Agency may annul the Notice of Award and the Bid Security of that Bidder will be forfeited. Bid security of other Bidders will be returned within fifteen (15) days of the bid opening, or sooner.

The Bid Bond is attached to this Addendum as Exhibit A.

II. Information to Bidders, new paragraph 16.

A new paragraph 16, to Information for Bidders, is included to inform Bidders of requirements for performance and labor and materials bonds, as follows:

16. Performance Bond and Labor and Material Payment Bond

Pursuant to NMSA 1978, § 13-4-18, the Contractor shall be required to furnish surety bonds in an amount at least equal to one hundred percent (100%) each of the total Contract price as security for faithful performance of the Contract and payment for all labor and materials. The surety company must be authorized to do business in the State of New Mexico and must be acceptable to the Owner.

The Performance Bond and the Labor and Material Payment Bond shall be submitted to the Agency simultaneously with delivery of the executed Construction Agreement.

Failure to return the signed Contract with acceptable bonds within ten (10) calendar days after the date of the Notice of Award shall be just cause for the cancellation of the Award and the forfeiture of the Bid Security, which shall become damages sustained. Award may then be made to the next lowest responsible Bidder, or the work may be readvertised and constructed under contract or otherwise, as the Owner may decide.

The Performance Bond is attached to this Addendum as Exhibit B. The Labor and Material Payment Bond is attached to this Addendum as Exhibit C.

III. Definitions and Terms.

Add the definition “contract/agreement” to Definitions and Terms, as follows:

- 17. Contract / Agreement:** means the Agency’s Construction Agreement, including all exhibits attached to it and incorporated in it by reference, and all amendments in accordance with its terms.

IV. Construction Agreement.

The Construction Agreement to be entered into between the Agency and the successful bidder is attached to this Addendum as Exhibit D.

V. Contract Documents.

All other provisions of the Contract Documents shall remain unchanged. This Addendum is hereby made a part of the Contract Documents to the same extent as those provisions contained in the original documents.

Receipt of Addendum No. 1 to RFB No. '15/04/P is hereby acknowledged

Authorized Signature

Date

Firm Name

Exhibit A
Bid Bond

BID BOND

- A. KNOW ALL MEN BY THESE PRESENTS, THAT WE _____, hereinafter called the PRINCIPAL, and the _____, of _____ a Corporation duly organized under the laws of the State of _____, and, authorized to do business in the State of New Mexico, hereinafter called the SURETY, as SURETY are held and firmly bound unto the Santa Fe Solid Waste Management Agency, hereinafter called the OBLIGEE, in the sum of _____ dollars (\$_____) for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted the accompanying bid, dated _____, 2014, (Bid No.' 15/04/B) for the Above-Ground Storage Tank Removal and Installation at the Caja del Rio Landfill, Santa Fe Solid Waste Management Agency, 149 Wildlife Way, Santa Fe, NM 87056.

- B. NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof or in the event of the failure of the Principal to enter such contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

- C. SIGNED AND SEALED THIS _____ DAY OF _____, 2014.

BIDDER

WITNESS

By: _____ (SEAL)
PRINCIPAL

WITNESS

By: _____
SURETY

TITLE

Exhibit B
Performance Bond

PERFORMANCE BOND

A. KNOW ALL MEN BY THESE PRESENTS, that _____ (here insert the name and address or legal title of the Contractor) as Principal, hereinafter called Contractor, and _____ (here insert the legal title of Surety) as Surety, hereinafter called Surety, are held firmly bound unto the Santa Fe Solid Waste Management Agency as Oblige, hereinafter called Owner, in the amount of _____ DOLLARS (\$_____) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

B. WHEREAS, the Contractor has by written agreement dated, _____, 2014, entered into a Contract with the Santa Fe Solid Waste Management Agency for Bid No.'15/04/B - Above-Ground Storage Tank Removal and Installation at the Caja del Rio Landfill in accordance with Contract Documents prepared by the Owner which Contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

C. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

1. The Surety hereby waives notice of any alteration or extension of time made by the Owner.
2. Whenever Contractor shall be, and declared by the Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default or shall promptly:
 - a. Complete the Contract in accordance with its terms and conditions or
 - b. Obtain a bid or bids for submission to Owner for completing the Contract in accordance with its terms and conditions, and upon determination by Owner and Surety of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as work progresses (even though there should be a default or a secession of defaults under the

contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price, but not exceeding, including other costs and damages for which the surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract price" as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

3. Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the contract falls due.
4. No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of the Owner.

(SIGNED) _____

TITLE _____

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2014.

NOTARY PUBLIC

My Commission Expires _____

Contractor- Principal

By: _____

Title: _____

Approved as to form:

Surety

Title: _____

Countersigned: _____

Surety's Authorized New Mexico Agent

Exhibit C
Labor and Material Payment Bond

LABOR AND MATERIAL PAYMENT BOND

A. KNOW ALL MEN BY THESE PRESENTS THAT

(HERE INSERT THE NAME AND ADDRESS OR LEGAL TITLE OF THE CONTRACTOR)
as Principal, hereinafter called Principal, and _____

(HERE INSERT THE LEGAL TITLE OF SURETY)

As Surety, hereinafter called Surety, are held and firmly bound unto the Santa Fe Solid Waste Management Agency as Obligee, hereinafter called Owner, for the use and benefits of claimants as herein below defined, in the amount of _____
DOLLARS, (\$_____) for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

B. WHEREAS, Principal has by written agreement dated _____, 2014 entered into a contract with the Santa Fe Solid Waste Management Agency for Bid No.'15/04/B - Above-Ground Storage Tank Removal and Installation at the Caja del Rio Landfill in accordance with Contract Documents prepared by the Owner which Contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

C. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, than this obligation shall be void; otherwise, it shall remain in full force, subject, however, to the following conditions.

1. A claimant is defined as one having a direct contract with the principal or with a subcontractor of the principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
2. The above-named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Owner shall not be liable for payment of any cost or expenses of any such suit.
3. No suit or action shall be commenced hereunder by any claimant:
 - a. Unless claimant, or other than one having a direct contract with the principal, shall have written notice to any two of the following: the Principal, the Owner, or the Surety above named, within ninety (90) days after such said claim is made, stating

with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed.

- b. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of business, or revised in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such services need not be made by a public officer.
 - c. After the expiration of one (1) year following the date on which Principal ceased work on said Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
 - d. Other than in a state court of competent jurisdiction in and for the Owner or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.
4. The amount of this bond shall not be reduced by and to the extent of any payments made in good faith hereunder, inclusive of the payment by Surety of mechanics liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

SIGNED AND SEALED on _____ , 2014

In the presence of:

NOTARY PUBLIC

My Commission Expires: _____

NAME OF COMPANY

By: _____

Title: _____

Surety

By: _____

Title: _____

Countersigned:

Surety's Authorized New Mexico Agent

This bond is issued simultaneously with performance bond in favor of contracting agency for the faithful performance of the contract.

Exhibit D
Construction Agreement

SANTA FE SOLID WASTE MANAGEMENT AGENCY
CONSTRUCTION AGREEMENT
(Above-Ground Storage Tank Removal and Installation - 2014)

This CONSTRUCTION AGREEMENT (“Agreement”) is made and entered into by and between the Santa Fe Solid Waste Management Agency (“the Agency”) and _____ (the “Contractor”) for the removal and installation of an above ground storage tank as described in RFB No. ‘15/04/B and below. The Agreement shall be effective as of the date this Agreement is executed by the Agency.

1. **SCOPE OF SERVICES**

The services subject to this Agreement are set forth in RFB No. ‘15/04/B and all related Contract Documents, including Contractor’s bid in response thereto, which is incorporated into this Agreement and attached hereto as Exhibit A.

2. **STANDARDS OF PERFORMANCE; LICENSES**

- A. Contractor represents that it possesses the experience and knowledge necessary to perform the services described in this Agreement.
- B. Contractor agrees to obtain and maintain throughout the term of this Agreement all applicable professional and business licenses required by law for itself and its employees, agents, representatives and subcontractors.

3. **COMPENSATION**

- A. The Agency shall pay to Contractor in full payment for services rendered, including applicable gross receipts taxes, a sum not to exceed _____.
- B. Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico on the sums payable under this Agreement.

C. Payment shall be made upon receipt and approval by the Agency of detailed statements containing a report of services completed. Compensation shall be paid only for services actually performed in accordance with the fee schedule set forth in the Scope of Work hereto attached in Exhibit A.

D. Detailed statements containing reimbursement expenses, if any, shall be itemized.

4. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations to and authorization from the Joint Powers Board for the Agency for the performance of this Agreement. If sufficient appropriations are not made or authorization provided, this Agreement shall terminate upon written notice from the Agency to Contractor. The Agency shall be responsible for charges incurred up to the date of notification under this Section per Section 6 of this Agreement. The Agency's decision as to whether sufficient appropriations are available shall be accepted by Contractor and shall be final.

5. TERM AND EFFECTIVE DATE

A. This Agreement shall be effective when signed by the Agency and terminate on June 30, 2015, unless it is terminated sooner pursuant to Article 4 or Article 6 of this Agreement.

6. TERMINATION

- A. The Agency may terminate this Agreement at any time and for any reason by giving ten (10) days written notice to Contractor. If the Agency terminates the Agreement:
- 1) Contractor shall render a final report of the services performed up to the date of termination and shall turn over to the Agency original copies of all work product, research, or papers prepared for the services covered by this Agreement. The Agency shall pay Contractor for services rendered and expenses incurred under this Section, including for preparation of the final report.

- 2) If compensation is not based upon hourly rates for services rendered, the Agency shall pay Contractor for the reasonable value of services satisfactorily performed through the date Contractor receives notice of such termination for which compensation has not already been paid.
 - 3) If compensation is based upon hourly rates and expenses, Contractor shall be paid for services rendered and expenses incurred through the date Contractor receives notice of such termination.
- B. The Agency further reserves the right to cancel all or any part of this Agreement without cost to the Agency if the Contractor fails to meet the provisions for this Agreement, and except as otherwise provided herein, to hold the Contractor liable for any excess costs associated with the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform is due to causes beyond the control and shall not be the fault of negligence of the Contractor and these causes have been made known to the Agency in written form within five working days of the Contractor becoming aware of a cause which may create any delay. Such causes include, but are not limited to, acts of God or the public enemy, acts of the State or of the Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-contractors due to any of the above unless the Agency shall determine that the suppliers or services to be furnished by the sub-contractor are obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule. The rights and remedies of the Agency are not limited to those provided for in this paragraph and are in addition to any other rights provided for by law.

7. STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

A. Contractor, its agents, and its employees are independent contractors performing professional services for the Agency and are not employees of the Agency.

B. Contractor, its agents, and its employees shall not accrue leave, retirement, insurance, bonding, or any other benefits afforded to employees of the Agency, and shall not be permitted to use Agency vehicles in the performance of this Agreement.

C. Contractor shall be solely responsible for payment of wages, salaries, and benefits to any and all employees or subcontractors Contractor retains to perform any of its obligations pursuant to this Agreement.

8. CONFIDENTIALITY

Any confidential information provided to or developed by Contractor in the performance of this Agreement shall be kept confidential, and shall not be made available to any individual or organization by Contractor without the Agency's prior written approval.

9. CONFLICT OF INTEREST

Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with its performance of its obligations pursuant to this Agreement. Contractor further agrees that it shall not employ or contract with anyone in the performance of this Agreement that has any such conflict of interest.

10. ASSIGNMENT; SUBCONTRACTING

Contractor shall not assign or transfer any rights, privileges, obligations or other interests under this Agreement, including any claims for money due, without the Agency's prior written consent. Contractor shall not subcontract any portion of the services to be performed under this

Agreement without the Agency's prior written approval.

11. RELEASE

Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the Agency, its officers, and its employees from all liabilities, claims, and obligations whatsoever arising from or under this Agreement. Contractor agrees not to purport to bind the Agency to any obligation not assumed herein by the Agency unless Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. INSURANCE

A. Contractor, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement professional liability insurance of \$2,000,000 for each claim, comprehensive general liability insurance of \$2,000,000 for each occurrence and \$2,000,000 in general aggregate coverage for bodily injury and property damage liability, in a form and with an insurance company acceptable to the Agency. The Agency shall be named as an additional insured under the insurance policy, and the policy shall provide that the Agency will be notified no less than 30 days before the policy is cancelled for any reason. Contractor has furnished the Agency with a copy of a Certificate of Insurance or other evidence of Contractor's compliance with the provisions of this section as a condition of entering into this Agreement.

B. Contractor shall carry and maintain Workers' Compensation insurance in accordance with New Mexico law to provide coverage for Contractor's employees throughout the term of this Agreement. Contractor shall provide the Agency with evidence demonstrating that appropriate Workers' Compensation insurance has been obtained.

C. Contractor shall also carry and maintain sufficient automobile liability insurance throughout the term of this Agreement to cover no less than \$2,000,000 combined single limit

for each accident.

13. INDEMNIFICATION

Contractor shall indemnify, hold harmless and defend the Agency from all losses, damages, claims or judgments, including payment of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action, or demand whatsoever to the extent arising from the negligent acts, errors, or omissions, or willful and reckless disregard of obligations under this Agreement, in the performance of any services covered by this Agreement, whether occurring on Agency managed or owned property or otherwise, by Contractor or its employees, agents, representatives, or subcontractors, excepting only such liability that arises out of the Agency's negligence.

14. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the Agency in connection with this Agreement is subject to the immunities and limitations set forth in the New Mexico Tort Claims Act, NMSA 1978 §§ 41-4-1 to 41-4-27. The Agency and its employees do not waive sovereign immunity, any available defense, or any limitation of liability recognized by law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

15. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title, or interest in, or for the benefit of, any person other than the Agency and Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary.

16. RECORDS AND AUDIT

Contractor shall maintain throughout the term of this Agreement and for a period of three years thereafter detailed records that indicate the date, time, and nature of services rendered. These

records shall be subject to inspection by the Agency, the City of Santa Fe Finance Department, and the State Auditor. The Agency shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments.

17. APPLICABLE LAW; CHOICE OF LAW; VENUE

Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the Agency. In any action, suit, or legal dispute arising from this Agreement, Contractor agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

18. AMENDMENT

This Agreement shall not be altered, changed, or modified except by an amendment in writing executed by the parties.

19. SCOPE OF AGREEMENT

This Agreement expresses the entire agreement and understanding between the parties with respect to the services set forth in the Scope of Work attached hereto as Exhibit A. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

20. NON-DISCRIMINATION

During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of the services Contractor undertakes pursuant to this Agreement on the basis of ethnicity, race, age, religion,

creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

21. SEVERABILITY

If one or more of the provisions of this Agreement or any application thereof is found to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions of the Agreement and any other application thereof shall not in any way be affected or impaired.

22. NOTICES

Any notices required to be given under this Agreement shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

AGENCY: Mr. Randall Kippenbrock, P.E.

Executive Director

Santa Fe Solid Waste Management Agency

149 Wildlife Way

Santa Fe, NM 87506

CONTRACTOR:

23. WARRANTY

All construction, materials, workmanship, and services provided by Contractor shall be covered by a one year warranty, as indicated in the Contract Documents, including the Contractor's bid. The warranty shall begin when the Agency accepts deliverables from the Bidder. The warranty contract shall be solely with the Contractor and the Contractor shall be responsible for ensuring all warranty work is satisfactorily completed on any product under this

Agreement. The Contractor shall respond to all requests for warranty repair within three (3) hours of notification by the Agency.

24. COMPLIANCE WITH LAWS AND REGULATIONS; PROHIBITION OF BRIBES, GRATUITIES, AND KICKBACKS

Contractor shall comply with all applicable federal, state, and local laws and regulations throughout the term of this Agreement. Contractor expressly acknowledges that the New Mexico Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation, and New Mexico criminal statutes impose penalties for bribes, gratuities, and kick-backs.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

SANTA FE SOLID WASTE
MANAGEMENT AGENCY:

Miguel Chavez
Chairperson

Date:

ATTEST:

Geraldine Salazar
Santa Fe County Clerk

CONTRACTOR:

Date:

APPROVED AS TO FORM:

Justin W. Miller
Agency Attorney

Date: